



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 12, 1997

The Honorable Carlos Lara  
Dimmit County Auditor  
Office of County Auditor  
103 North Fifth Street  
Carrizo Springs, Texas 78834

Letter Opinion No. 97-100

Re: Whether a county attorney may  
simultaneously serve on the board of directors of  
a county hospital (ID# 39417)

Dear Mr. Lara:

You have requested our opinion as to whether the county attorney of Dimmit County may simultaneously serve on the board of managers of the Dimmit County Memorial Hospital.

You indicate that the Dimmit County Memorial Hospital was established under the provisions of chapter 263, Health & Safety Code. The hospital is governed by a board of managers appointed by the commissioners court for a "term of two years." Health & Safety Code §§ 263.041, .046. A member of the board may be removed "from office" by the commissioners court "for cause." *Id.* § 263.045. The board's function is to "generally manage and control the hospital," *id.* § 263.046, and it appoints a superintendent, who acts as the hospital's "chief executive officer." *Id.* §§ 263.071, .072. The commissioners court is authorized to provide "hospitalization insurance as compensation" to members of the board, and you have informed us that the Dimmit County Commissioners Court does so. *Id.* § 263.043(a)

Article XVI, section 40, of the Texas Constitution, prohibits an individual from holding "at the same time, more than one civil office of emolument." In our opinion, a member of the board of managers of a county hospital occupies an "office." The position is created by statute, and its powers are defined by the legislature. *See Aldine Indep. Sch. Dist. v. Standley*, 280 S.W.2d 578, 581 (Tex. 1955). A member holds his position for a fixed term. *See Attorney General Opinions DM-49 (1991), JM-847 (1988), MW-39 (1979)*. The board is not accountable on a day-to-day basis to the commissioners, and a manager may be removed by the court only "for cause." *See Attorney General Opinion JM-499 (1986)*. Furthermore, "a member of the board of managers is a county officer for purposes of Chapter 102, Civil Practice & Remedies Code." Health & Safety Code § 263.044. *See also Attorney General Opinion M-409 (1969)*. We believe that the position of member of the board of managers of a hospital district bears sufficient indicia of an "office" that it may reasonably be said to constitute an office under the terms of article XVI, section 40.

The office of manager is also one "of emolument." An "emolument" is any pecuniary profit, gain, or advantage paid to an officer, although it does not include the legitimate reimbursement of expenses. *Attorney General Opinion DM-55 (1991); see Irwin v. State*, 177 S.W.2d 970 (Tex. Crim. App. 1944); *see generally Attorney General Opinion MW-450 (1982)*. Even a token payment of \$10 per meeting constitutes an emolument. *Willis v. Potts*, 377 S.W.2d 622 (Tex. 1964); *see Attorney*

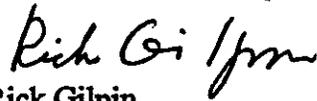
General Opinion JM-1266 (1990). We believe it is clear that the provision of "hospitalization insurance" constitutes an "emolument" sufficient to bring the office of manager within the provisions of article XVI, section 40.

Since the position of county attorney is also an "office of emolument," it follows that the county attorney of Dimmit County is prohibited by article XVI, section 40, from simultaneously serving as a member of the board of managers of Dimmit County Hospital.

**S U M M A R Y**

The county attorney of Dimmit County is prohibited by article XVI, section 40, Texas Constitution, from simultaneously serving as a member of the board of managers of Dimmit County Hospital.

Yours very truly,



Rick Gilpin  
Deputy Chief  
Opinion Committee